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No. 83-1751

In the Supreme Court of the United States

October Term, 1983

JOHN R. ROBINSON,
Petitioner,

vs.

THE STATE OF MISSISSIPPI,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of the State of Mississippi

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18 pp + 2 f.o.

QUESTION PRESENTED

The Mississippi real property purchased by petitioner, a non-resident alien, should not escheat to the State of Mississippi for the reason that, under the authority of Article VI, Section 2, United States Constitution, Section 89-1-23 of the Mississippi Code of 1972 prohibiting certain non-resident aliens from owning property within the State of Mississippi must yield to treaties of the United States with a foreign country.

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No.

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JOHN R. ROBINSON,
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vs.

THE STATE OF MISSISSIPPI,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of the State of Mississippi

INTRODUCTORY STATEMENT

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Mississippi entered on December 14, 1983, affirming without written opinion the decision of the state circuit court below entered on July 16, 1982, which held that the Mississippi real property owned by petitioner, a non-resident alien citizen of Canada, should escheat to the State of Mississippi as provided by Section 89-1-23, Mississippi Code of 1972.

OPINION BELOW

The Supreme Court of Mississippi entered its decision affirming the opinion of the lower court on December 14, 1983, without written opinion. A copy of the Order affirming the decision of the Circuit Court of Oktibbeha

County entered on the Minutes of the Mississippi Supreme Court, Minute Book BW, page 551, is attached hereto as Appendix "A." Petition for rehearing was denied on January 25, 1984, without opinion. A copy of the Order of the Supreme Court of Mississippi denying the Petition for Rehearing from Minute Book BW, page 593, is attached hereto as Appendix "C."

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1257(c).

CONSTITUTIONAL PROVISION INVOLVED

Art. VI. 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

TREATY PROVISIONS INVOLVED

Article V of the Convention Between the United States of America and the United Kingdom of Great Britain and Ireland, March 2, 1899, 31 Stat. 1939, TS 146:

In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in the Dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation.

Article I, Supplementary Convention between the United States and Great Britain, October 21, 1921, 42 Stat. 2147, TS 663:

The provisions of the Convention of March 2nd, 1899, shall become applicable to the Dominion of Canada upon ratification of the present Convention in the manner provided by Article II hereof.

Article IX, Treaty with Argentine Confederation, July 27, 1853, 10 Stat. 1005, TS 4:

In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods, and effects, and to the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights as native citizens; and they shall not be charged in any of those respects, with any higher imposts or duties than those which are paid, or may be paid, by native citizens—submitting, of course, to the local laws and regulations of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the consul-general, or consul of the nation to which the deceased belonged, or the representative of such consul-general or consul, in his absence, shall have the right to intervene in the possession, administration, and judicial liquidation of the estate of the deceased, comformably with the laws of the country, for the benefit of the creditors and legal heirs.

STATUTES INVOLVED

Section 89-1-23, Mississippi Code of 1972:

Resident aliens may acquire and hold land, and may dispose of it and transmit it by descent, as citizens of the state may. Nonresident aliens shall not hereafter acquire or hold land, but a nonresident alien may have or take a lien on land to secure a debt, and at any sale thereof to enforce payment of the debt may purchase the same, and thereafter hold it, not longer than twenty years, with full power during said time to sell the land, in fee, to a citizen; or he may retain it by becoming a citizen within that time. All land held or acquired contrary to this section shall escheat to the state; but a title to real estate in the name of a citizen of the United States, or a person who has declared his intention of becoming a citizen, whether resident or nonresident, if he be a purchaser or holder, shall not be forfeited or escheated by reason of the alienage of any former owner or other person.

Any person who was or is a citizen of the United States and became or becomes an alien by reason of marriage to a citizen of a foreign country, may hereafter inherit, or if he or she heretofore inherited or acquired or hereafter inherits, may hold, own, transmit by descent or transfer land free from any escheat to the State of Mississippi, if said land has not heretofore escheated by final valid order or decree of a court of competent jurisdiction.

Nonresident aliens who are citizens of Syria or the Lebanese Republic may inherit property from citizens or residents of the State of Mississippi.

STATEMENT OF THE CASE

Petitioner is a non-resident alien and a citizen of Canada who purchased a house and approximately 45.02 acres of property in Oktibbeha County, Mississippi on June 8, 1981. The State of Mississippi, through the District Attorney of Oktibbeha County, instituted Quo Warranto proceedings on September 23, 1981. In his answer Petitioner pled the following affirmative defense:

> The defendant would show that he is a citizen of Canada. The defendant would show that the provisions of Section 89-1-23, Mississippi Code of 1972, on which a Quo Warranto Information is filed herein, are void in that they are contrary to treaties between the United States of America and Canada. (R. 14-15)

A trial brief was prepared for the Trial Judge on this issue by Petitioner.

This case was tried before a Circuit Judge, without a jury, on March 10 and 11, 1982. At that proceeding all facts necessary to a determination of the issue raised before this Court in this Petition for Certiorari were stipulated by the parties: that the Petitioner was a non-resident alien of the State of Mississippi and citizen of Canada, that he had purchased, acquired and held the property in question. Also introduced as Exhibit Five by stipulation of the parties were certified copies of a treaty between the United States and Great Britain, signed at Washington, D. C. on March 2, 1899, and a supplementary treaty between the United States and Great Britain dated October 21, 1921, which treaties are reported at 31 Stat. 1939 and 42 Stat. 2147.

Comes now the State of Mississippi and the defendant by and through his attorney, Hon. Sam Wilkins,

and would stipulate that the defendant in this quo warranto proceeding, one John R. Robinson, is a non-resident alien of the State of Mississippi and of the United States, and is a Canadian citizen, and that this alien, John R. Robinson, is not within the jurisdiction of this Court, and further that John R. Robinson, a non-resident alien has purchased and acquired real property in the State of Mississippi, Oktibbeha County, as exhibited by a warranty deed on file and of record in the office of the Chancery Court of Oktibbeha County, Mississippi, . . .

. . . It is further stipulated that John R. Robinson did not acquire and hold the land described in Exhibit 4 by virtue of any inheritance or by any descent and distribution, and that he further did not acquire and hold the land described in Exhibit 4 by virtue of purchasing said land for the enforcement of the payment of any debt or by virtue of any foreclosure of a mortgage or deed of trust.

It is further stipulated by the State and by the defendant by and through his attorney, that a duly certified treaty between the United States and Great Britain, and the United States and Canada, be introduced as evidence herein, said treaty bearing the certificate of the Secretary of State of the United States, and duly certificated according to the Acts of Congress. (R. 162-167)

On May 14, 1982, the Trial Court entered its opinion rejecting the argument of Petitioner.

[C]ounsel for the defendant argued that the United States and Great Britain entered into a treaty which contained a 'most favored nation' clause and that this clause means that the contracting countries grants to

> the other country the broadest rights and privileges which it accords to any other nation in other treaties it has made or will make. However, the Court finds that the said treaty does not authorize a non-resident Canadian citizen to hold and acquire real property in the United States in derogation of any state law. The Court finds that this treaty in no way affects the State's rights through its legislature to restrict the ownership of real property located within the state's boundaries. Specifically, title to real property is acquired, held, and passed according to the "lex rei sitae," and therefore the title of aliens to land within the boundaries of the several states is a matter of state regulation. (R. 779-780)

A copy of the entire opinion of the trial court is attached hereto as Appendix "B".

The sole issue raised on appeal of this cause to the Supreme Court of Mississippi, and on the Petition for Rehearing, is the issue now presented to this Court. The Mississippi Supreme Court issued no written opinion.

ARGUMENT

Acreage in Oktibbeha County, Mississippi, was purchased and held by Petitioner, a Canadian national, in contravention of Mississippi statutory law. Section 89-1-23, Mississippi Code of 1972, specifically provides that "non-resident aliens shall not hereafter acquire or hold land . . ." within the State of Mississippi, excepting only citizens of Syria and the Lebanese Republic. It is the position of Petitioner that this Mississippi statute is in conflict with and must yield to the treaties entered into between the United States and the United Kingdom, as this Court has established in *Zschernig v. Miller,* 389 U.S. 567, 88 S.Ct. 664 (1968).

Three treaties come into play in this case, as designated earlier in this Petition. Under these treaties, read together, a citizen of Canada is entitled, as a matter of United States national policy, to acquire and dispose of property of every kind in the same manner as would a United States citizen. Therefore, the land acquired by Petitioner is not properly the subject of a Quo Warranto proceeding by the State of Mississippi.

In 1899 the United States and the United Kingdom entered into a treaty "relating to the tenure and disposition of real and personal property" which contained a "most favored-nation" clause. (Article V, 31 Stat. 1939, TS 146) A 1921 supplemental treaty specifically made the 1899 treaty applicable to Canada. (Article I, 42 Stat. 2147, TS 663) By a "most-favored-nation" clause, each contracting country grants to the other contracting country the broadest rights and privileges which are accorded to any other nation in other treaties it has made or will make. Under a "most-favored-nation" clause, in this instance, a Canadian national would have the same rights regarding tenure and disposition of real and personal property as American citizens living in Mississippi. See *Kolovrat v. Oregon*, 366 U.S. 187, 6 L.Ed.2d 218, 81 S.Ct. 922 (1961).

Such favorable treatment was granted in 1853 when the United States and Argentina entered into a Treaty which specifically provides that the citizens of the two countries "shall reciprocally enjoy the same privileges, liberties, and rights, as native citizens" in "the acquiring and disposing of property of every sort and denomination." Article IX, 10 Stat. 1005, TS 4. Under the "most-favored-nation" clause of the 1899 treaty between the United States and Great Britain, and the supplemental 1921 treaty, Canadian nationals are entitled to acquire and dispose of property to the same extent and in the same manner as

are Argentine citizens, who are treated, for these purposes, as are American citizens residing in the State of Mississippi.

The State of Mississippi has recognized in case law the priority of United States treaties over state law. In the case of *Guiseppe v. Cozzani,* 238 Miss. 273, 118 So.2d 189, 191 (1960), the Mississippi Supreme Court stated:

> Section 842, Miss. Code of 1942 [now §89-1-23, Mississippi Code of 1972], provides, among other things, that "non-resident aliens shall not hereafter acquire or hold land, * * *." However, every treaty made by the authority of the United States is superior to the constitution or laws of any individual state. If the law of a state is contrary to a treaty, it is void. This was so held in the case of *Hauenstein v. Lynham,* 100 U.S. 483, 25 L.Ed. 628.

The enactment of state laws which attempt to preempt the treaties of the United States is proscribed by Article VI, Section 2 of the United States Constitution and has been characterized as "state involvement in foreign affairs and international relations—matters which the Constitution entrusts solely to the Federal Government." *Zschernig v. Miller,* supra, 88 S.Ct. at 668. Yet, the Mississippi Supreme Court declined to recognize the priority of Federal treaties in this instance, giving no written opinion for its failure to act in accordance with Federal law and its own prior holding.

CONCLUSION

This Court should grant certiorari to consider the injustice done Petitioner by the institution of Quo Warranto proceedings in this instance. The State of Mississippi must recognize and yield to the treaties entered into by the United States and Great Britain, which grant to Canadian citizens the right to own real estate in the United States. These treaties preclude the action taken against this Petitioner. The Quo Warranto Information filed against the Petitioner should have been dismissed and held for naught.

Respectfully submitted,

JOHN R. ROBINSON, Petitioner
By /s/ SAMUEL H. WILKINS, ESQ.
105 North State Street
Jackson, Mississippi 39201
Tel. 601-354-0770
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Samuel H. Wilkins, Esq., attorney for Petitioner, hereby certify that I have this date served a true and correct copy of the foregoing Petition for Writ of Certiorari upon Counsel for Respondent, The Hon. Ed Pittman, Attorney General of the State of Mississippi, P.O. Box 220, Jackson, Mississippi 39205.

This 19th day of April, 1984.

/s/ SAMUEL H. WILKINS

APPENDIX "A"

551 MINUTE BOOK BW
MINUTES, SUPREME COURT OF MISSISSIPPI SEPTEMBER TERM, 198 3

LAWRENCE-GREENWOOD 1977

WEDNESDAY, DECEMBER 14, 1983 : : : : :

JOHN R. ROBINSON)
) This cause having been submitted at a former Term on the record herein
#54,324 v)
) from the Circuit Court of Oktibbeha County and this Court having suffi-
STATE OF MISSISSIPPI)

ficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 16th day of July, 1982, be and the same is hereby Affirmed. It is further ordered and adjudged that the appellant do pay all of the costs of this appeal to be taxed for which let proper process issue.

APPENDIX "B"

(Filed May 14, 1982)

No. 14,081

IN THE
CIRCUIT COURT OF OKTIBBEHA COUNTY,
MISSISSIPPI

STATE OF MISSISSIPPI,

vs.

JOHN R. ROBINSON,
Defendant.

OPINION OF THE COURT

The State of Mississippi by the filing of a Quo Warranto Information pursuant to Section 11-39-1, Mississippi Code Annotated, 1972, seeks to have the land purchased by one, John R. Robinson, in Oktibbeha County, Mississippi, escheated to the State. This proceeding was filed after a four to five month investigation of a large scale drug air smuggling operation by local, state and federal agencies which involved the purchase of the land in Oktibbeha County, Mississippi.

The Court had set several dates for the appearance and discovery of the defendant, John R. Robinson, and after the defendant had failed to appear on each occasion, except through his attorney, the Court set the case for trial. The defendant did not appear at the trial, but his attorney appeared and stipulated that the defendant was a Canadian citizen and was a non-resident alien as set out in the Quo Warranto filed by the State. However, counsel for the defendant argued that the United States and Great Britain entered into a treaty which contained a "most favored nation" clause and that this clause means

that the contracting countries grants to the other country the broadest rights and privileges which it accords to any other nation in other treaties it has made or will make. However, the Court finds that the said treaty does not authorize a non-resident Canadian citizen to hold and acquire real property in the United States in derogation of any state law. The Court finds that this treaty in no way affects the State's rights through its legislature to restrict the ownership of real property located within the states boundaries. Specifically, title to real property is acquired, held, and passed according to the "lex rei sitae", and therefore the title of aliens to land within the boundaries of the several states is a matter of state regulation.

In addition to this the evidence shows that the land was not purchased in good faith, but rather was purchased by a drug smuggling ring for the sole purpose of flying in illegal drugs. The land contained a landing strip and a house. False walls had been placed in the upstairs bedrooms where drugs could easily be hidden during any search of the premises. The evidence further showed that the purchase of this property was a central part of a large scale criminal conspiracy to violate the laws of the State of Mississippi and thus to injure the public welfare of the citizens of the State, and that the defendant, John R. Robinson, was a prime moving force behind this criminal conspiracy.

It is, therefore, the opinion of the Court that the land having been purchased by a non-resident alien and having been purchased in bad faith for the use of a drug smuggling operation; that the real property should escheat to the State of Mississippi; that the Sheriff of Oktibbeha County, Mississippi, as county escheator shall take the necessary and proper steps to escheat the land to the State of Mississippi.

APPENDIX "C"

MINUTES, SUPREME COURT OF MISSISSIPPI SEPTEMBER TERM, 198 3 MINUTE BOOK BW 503

LAWYERS-GREENWOOD 1977

WEDNESDAY, JANUARY 25, 1984, COURT SITTING : : : : :

JOHN R. ROBINSON)
) This cause this day came on to be heard on Petition for Rehearing and
#54,324 v)
) this Court having sufficiently examined and considered the same en banc
STATE OF MISSISSIPPI)
) and being of the opinion that the same should be Denied doth order that
)
) said Petition be and the same is hereby Denied.

SL 1 PAGE 2

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OCTOBER TERM, 1983

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Petitioner,

vs.

THE STATE OF MISSISSIPPI,

Respondent.

RESPONDENT'S BRIEF IN RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Mississippi real property purchased by Petitioner, a non-resident alien, should escheat to the State of Mississippi since Section 89-1-23, Mississippi Code Ann. (1972), which prohibits certain non-resident aliens from owning property within the State of Mississippi, is not in conflict with Article VI, Section 2, United States Constitution, or treaties of the United States with a foreign country.

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NO. 83-1751

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JOHN R. ROBINSON,

Petitioner,

vs.

THE STATE OF MISSISSIPPI,

Respondent.

RESPONDENT'S BRIEF IN RESPONSE TO
THE PETITION FOR WRIT OF CERTIORARI

INTRODUCTORY STATEMENT

Respondent prays that a request for writ of certiorari be denied to review the judgment of the Supreme Court of Mississippi entered on December 14, 1983, affirming

without written opinion the decision of the state circuit court below entered on July 16, 1982, which held that the Mississippi real property owned by the Petitioner, a non-resident alien citizen of Canada, should escheat to the State of Mississippi as provided by Section 89-1-23, Mississippi Code Ann. (1972).

STATEMENT OF THE CASE

The State of Mississippi filed a Quo Warranto Information pursuant to Section 11-39-1, Mississippi Code Ann. (1972), seeking to have escheated to the State a 45.02 acre tract of realty owned and held by the Petitioner, John R. Robinson, a Canadian citizen, in contravention of Section 89-1-23, Mississippi Code Ann. (1972), which provides that a non-resident alien may not purchase

and hold real property in Mississippi. Trial on the matter was held in the Circuit Court of Oktibbeha County with Judge Harvey Buck presiding. Sitting without a jury, Judge Buck held that the State's actions were proper and controlling in this instance and that they were not in contravention of any of the treaty obligations of the United States with Great Britain and Canada.

Judge Buck also found in his opinion that the evidence showed that the land the subject of this suit was not purchased in good faith, but rather was purchased by a drug smuggling ring for the sole purpose of flying in illegal drugs. The land contained a landing strip and a house. False walls had been placed in the upstairs bedrooms where drugs could easily be hidden during any search of the premises. The

evidence further showed that the purchase of this property was a central part of a large scale criminal conspiracy to violate the laws of the State of Mississippi and thus to injure the public welfare of the citizens of the State, and that the defendant, John R. Robinson, was a prime moving force behind this criminal conspiracy.

The Supreme Court of the State of Mississippi entered its decision affirming the opinion of the lower court on December 14, 1983, without written opinion. The Petition For Rehearing was denied on January 25, 1984, without opinion. Petitioner has now filed for a Writ Of Certiorari to review the decision of the Supreme Court of the State of Mississippi that real property owned by the Petitioner, a non-resident alien citizen of Canada, should

escheat to the State of Mississippi as provided by Section 89-1-23, Mississippi Code Ann. (1972).

Respondent does not agree (1) with the Petitioner's reasoning to support his request that Writ Of Certiorari be issued with respect to his interpretation of the "most-favored-nation" clause in the 1899 treaty with Great Britain and (2) the notion that the United States treaty framework is designed to protect the kind of illicit activity proven in the case at bar.

ARGUMENT

I.

SINCE NO CONFLICT EXISTS BETWEEN SECTION 89-1-23, MISSISSIPPI CODE ANN. (1972), AND THIS COUNTRY'S TREATIES WITH GREAT BRITAIN, THEN THE PROPERTY PROPERLY ESCHEATED TO THE STATE OF MISSISSIPPI BY OPERATION OF SECTION 11-39-1, MISSISSIPPI CODE ANN. (1972).

By treaty dated March 2, 1899, the United States of America and the United

Kingdom of Great Britain and Ireland entered into an agreement dealing with the disposal of property between the subjects and citizens of the respective parties. Article V of that treaty states:

> In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in the Dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation.

Convention Between the United States of America and the United Kingdom of Great Britain and Ireland, March 2, 1899, art. V, 31 Stat. 1939, TS 146 (emphasis added).

In a supplementary treaty between the United States and Great Britain dated October 21, 1921, those parties agreed in article I that:

> The provisions of the Convention of March 2nd, 1899, shall become applicable to the Dominion of Canada upon ratification of

> the present Convention in the manner provided by Article II hereof.

Supplementary Convention between the United States and Great Britain, October 21, 1921, art. I, 42 Stat. 2147, TS 663.

The Petitioner alleges that as a Canadian citizen the 1921 treaty between Great Britain and the United States renders applicable to him the provisions of a treaty consummated by the United States and Great Britain in 1899. By virtue of the "most-favored-nation" clause of the 1899 treaty, Petitioner contends that the rights and privileges with regard to real property accorded Argentine citizens in a treaty between the United States and Argentina dated July 27, 1853, should also be accorded citizens of Canada. Treaty with Argentine Confederation, July 27, 1853, art. IX, 10 Stat. 1005, TS4. One of the rights and privileges included in the

Argentine treaty is the ability to acquire realty. Article IX, 10 Stat., supra at 1009, TS4. Petitioner claims that since the Argentine Treaty, in his theory, would allow him to acquire real property and such ability is created by treaty, and since treaties take precedence over state statutes which conflict with them, then Section 89-1-23, Mississippi Code Ann. (1972), could not apply to him. The Mississippi Supreme Court has recognized the superiority of United States treaties over state law by holding in Guiseppe v. Cozzani, 238 Miss. 273, 118 So.2d 189 (1960) that if the law of a state is contrary to a treaty, that law is void.

Respondent would argue that the "most-favored-nation" clause in the 1899 treaty between the United States and Great Britain imposes a limitation upon the powers which

are granted with regard to realty through the vehicle of another treaty with another nation. The "most-favored-nation" clause which was included in the 1899 treaty between the United States and Great Britain reads as follows:

> In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in the Dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation.

Art. V, 31 Stat., supra at 1940, TS 146 (emphasis added).

It should be noted that, from the citation above of the "most-favored-nation" clause of the 1899 treaty, only the right of disposing of real property is dealt with. Thus, any rights or privileges which a Canadian citizen might seek to invoke from any other treaty,

such as the Argentine Treaty, are subject to the limitations of this particular "most-favored-nation" clause. Specifically, the treaty between the United States and Argentina provides in article IX as follows:

> In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods, and effects, and to the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights as native citizens; and they shall not be charged in any of those respects, with any higher imposts or duties than those which are paid, or may be paid, by native citizens--submitting, of course, to the local laws and regulations of each country respectively.

10 Stat. at 1009, TS 4 (emphasis added).

As can be observed by a reading of the Argentine Treaty, that treaty dealt with "acquiring and disposing of property of every sort and denomination . . . the citizens of the two contracting parties shall reciprocally

enjoy the same privileges, liberties, and rights, as native citizens. . . ." (emphasis added.) The Respondent may apply this language by utilizing it as part of the treaty which applies to his citizenship. However, in doing so, the portions of the Argentine Treaty which may be used are subject to the specific limitations of the 1899 treaty between the United States and Great Britain. In other words, the Respondent cannot go beyond the bounds of the 1899 treaty and, therefore, the "acquiring" language of the Argentine Treaty is inapplicable to a Canadian citizen.

As is thus obvious, the "most-favored-nation" clause of the 1899 treaty with Great Britain extends Petitioner's federally granted privileges only to the disposal of real property and does not deal with acquiring or holding property. Since the application of

that clause to a Canadian citizen does not include through existing treaties the ac- acquiring or holding of property, no conflict with Section 89-1-23, Mississippi Code Ann. (1972) exists. For the purposes of the instant question before this Court, which is that of acquiring or holding property, the statute and the 1899 treaty with Great Britain are not at odds.

Section 89-1-23, Mississippi Code Ann. (1972), in its entirety provides as follows:

> Resident aliens may acquire and hold land, and may dispose of it and transmit it by descent, as citizens of the state may. Nonresident aliens shall not hereafter acquire or hold land, but a non-resident alien may have or take a lien on land to secure a debt, and at any sale thereof to enforce payment of the debt may purchase the same and thereafter hold it, not longer than twenty years, with full power during said time to sell the land, in fee, to a citizen; or he may retain it by becoming a citizen within that time. All land held or acquired contrary to this section shall escheat to the state; but a title to real estate in the name of a citizen of the United States, or a person who has declared his intention of becoming

a citizen, whether resident or nonresident, if he be a purchaser or holder, shall not be forfeited or escheated by reason of the alienage of any former owner or other person.

Any person who was or is a citizen of the United States and became or becomes an alien by reason of marriage to a citizen of a foreign country, may hereafter inherit, or if he or she heretofore inherited or acquired or hereafter inherits, may hold, own, transmit by descent or transfer land free from any escheat to the State of Mississippi, if said land has not heretofore escheated by final valid order or decree of a court of competent jurisdiction.

Nonresident aliens who are citizens of Syria or the Lebanese Republic may inherit property from citizens or residents of the State of Mississippi.

The United States is a party to several bilateral treaties of friendship, commerce, and navigation. These treaties generally tend to regulate private and commercial rights and with respect to land ownership rights, their provisions, though clear and precise, are only incidental. Limitations on Alien Investment in American Real Estate, 60 Minn. L. REV. 621, at 657 (1976). The treaties involved in

this matter are such bilateral treaties. Id. at 658, footnote 225. These older bilateral treaties are more specific in their provisions and more limited in their scope. Their normal purpose was to satisfy inheritance problems, which apparently was a constant problem earlier this century. Id. at p. 661. This inheritance problem explains why the provision in the 1921 treaty for Canadian citizens only deals with disposing of property. With such a provision Canadian citizens could dispose of property in the United States which they inherited.

As has already been demonstrated, the 1899 treaty "most-favored-nation" clause, by which the Petitioner attempts to bring into effect the Argentine Treaty provisions with regard to realty, limits its far-reaching

effect to disposal of real property alone. Therefore, as far as the acquiring and holding of the realty is concerned, the 1899 treaty with Great Britain and Section 89-1-23 in no way stand in conflict with each other. In addition, the title of aliens to land within the limits of the several states is a matter for state regulation. United States v. Fox, 94 U.S. 315, 24 L.ed. 192 (1877); Sunderland v. United States of America, 266 U.S., 69 L.ed. 226 (1924). Since no conflict exists, then the actions by the trial court and the Mississippi Supreme Court were totally appropriate. Both courts clearly recognized this and the Mississippi Supreme Court did so without finding the necessity of writing a written opinion.

II.

UNITED STATES TREATY FRAMEWORK SHOULD NOT BE CONSTRUED TO PROTECT ILLICIT ACTIVITY.

Even if it is assumed, arguendo, that by virtue of the 1899 treaty "most-favored-nation" clause, the Argentine Treaty provision for the ownership of real property applied, it would be most difficult to believe that the Petitioner would be one of the class of persons protected by the treaty.

In the above-cited article IX of the 1853 Argentine Treaty, it should be noted that along with the right to acquire, hold, and dispose of real property, the nationals of each of the parties to the treaty were afforded the others rights and privileges in the area of "police of the ports . . . administration of justice . . . submitting,

of course, to the local laws and elections of each country respectively." Art. IX, 10 Stat., supra at 1009, TS4 (emphasis added). Reading article IX in its entirety, it is clear that the treaty was to assist the lawful pursuit of commerce and activities relating thereto. In no way could a large scale illicit drug operation fall into the category of lawful activity. Respondent feels that even if the entire Argentine "most-favored-nation" clause is construed as applicable, the Petitioner overstepped any protection he may have been due under such construction by engaging in the illicit activity which the trial judge noted in his opinion. Therefore, since he overstepped the treaty's coverage, state law would control thereby making the State's actions most appropriate.

It is the Respondent's belief that no treaty of the type mentioned in this brief should be utilized as a cover for illegal activity. There could not help but be a "good faith" implication that any rights conferred on the citizens of another country who are non-resident aliens would be free to exercise those rights conferred by treaty so long as they did so in "good faith" without conflict with the local laws. It is inconceivable that such a treaty could be utilized as protection for illegal activities in this country and allow a non-resident alien to come in and violate the laws of this country by his illegal activities and not be subject to state laws. Robinson's actions were clearly outside the treaty's "good faith" contemplations. With the treaty not being

applicable, state law governs and Section 89-1-23, Mississippi Code Ann. (1972) calls for the escheatment of the property of a non-resident alien to the state.

It should be noted that there is a possibility of severe public policy damage due to the ramifications of any ruling by this Court which may return the real property to the Petitioner. If the Supreme Court overrules the trial court and the Mississippi Supreme Court's actions in the instant situation, such a decision would permit any large-scale illegal operation of whatever type to search their ranks to find either a British or Canadian citizen, or any other foreign citizen similarly situated, in order to utilize that particular person to purchase the necessary realty to run their illegal

enterprise. Since the law would have been construed so as to not allow the forfeiture of the property, the Court would find itself in the unenviable position of protecting illegal business activity in this State. In view of this possibility, Respondent would again urge the Court to allow Section 89-1-23 to control in the instant situation, thereby divesting Petitioner of his realty in accordance with Section 11-39-1.

CONCLUSION

It is the State's position that the 1899 treaty which contains the "most-favored-nation" clause is limited to the disposal of property and does not apply to the purchase and holding of property by a non-resident alien. Any attempt to apply the realty provisions of the 1853 Argentine Treaty must be subject

to the limitations of the 1899 treaty's "most-favored-nation" clause. Since none of the treaty obligations of the United States require any state to extend to this Petitioner the privilege of acquiring and holding real property, then Section 11-39-1 should be utilized to divest the Petitioner of the realty he has acquired in contravention of Section 89-1-23. This is exactly what has taken place in this situation.

In addition, if it is assumed that the Petitioner possesses the right to acquire and hold real property, the framers of the treaties discussed above certainly intended to cover only legitimate operations by the citizens of the respective countries which would include the idea that the real

estate would be purchased in "good faith", to be utilized in a legitimate fashion and not contrary to law. It would simply be a terrible thing to allow a non-resident alien to purchase property to violate the laws of this country and yet utilize the provisions of a treaty not even specifically dealing with his own country to escape the application of the local laws. A ruling from this Court overturning the trial judge and the Mississippi Supreme Court's decision would enable any large-scale illicit operation to purchase realty for its purposes. Any fair interpretation of the treaties involved and their effect on the Mississippi statute in question in no way mandates a reversal of this particular case. Public policy considerations of the instant situation certainly mitigate in favor of

the State. This Court should affirm the trial court's and the Mississippi Supreme Court's decision.

Since our treaty obligations with Great Britain and Canada in no way conflict with Section 89-1-23, Mississippi Code Ann. (1972), then that statute along with Section 11-39-1, Mississippi Code Ann. (1972), should operate as intended. It is the intention of those statutes to protect the health, welfare and safety of Mississippi citizenry. Their intention should be manifested in this Court's affirmance of the trial court's and Mississippi Supreme Court's decision.

Respectfully submitted,

STATE OF MISSISSIPPI

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PROOF OF SERVICE

I, MACK CAMERON, Special Assistant Attorney General of the State of Mississippi, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 6th day of August, 1984, I served copies of the foregoing Respondent's Brief In Response To The Petition For Writ Of Certiorari as follows:

(1) Upon the Supreme Court of the United States, by mailing Federal Express forty (40) copies in a duly addressed envelope, to the Clerk, United States Supreme Court, 1 First Street, N.E., Washington, D.C., 20543; and

(2) On counsel for Petitioner, by mailing three (3) copies in a duly addressed envelope, with postage prepaid, to Honorable Samuel H. Wilkins, 105 North State Street, P. O. Box 504, Jackson, Mississippi 39205.

Mack Cameron

MACK CAMERON
Special Assistant Attorney General

No. 83-1751 (3)

Office-Supreme Court, U.S.
FILED
NOV 29 1984
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1984

JOHN R. ROBINSON, PETITIONER

v.

STATE OF MISSISSIPPI

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

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STATE OF MISSISSIPPI

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States. The question presented is whether a Mississippi statute that prohibits non-resident aliens from acquiring or holding land is inconsistent with applicable treaties of the United States.

1. Petitioner, a citizen of Canada, does not reside in the United States. In 1981, he purchased a tract of land in Mississippi for use in a drug smuggling scheme. Pet. 3; Pet. App. A3-A4. Following a criminal investigation by state and federal officials, the State of Mississippi filed a quo warranto information in state court seeking a declaration that the land was improperly owned by petitioner and should escheat to the State under Miss. Code Ann. § 89-1-23 (1972), which provides:

> Nonresident aliens shall not hereafter acquire or hold land * * *. All land held or acquired contrary to this section shall escheat to the state * * *.

In defense to this action, petitioner argued that the Mississippi statute contravenes an 1899 treaty between the United States and Great Britain[1] as later extended to Canadian citizens.[2] Petitioner contended that the treaty affords Canadian nationals the same right to own property in this country as is granted by the United States to citizens of the most favored nation and that, because an 1853 treaty between the United States and Argentina confers upon Argentine citizens the rights enjoyed by American citizens to acquire and dispose of property,[3] Canadian citizens are entitled to the same right as American citizens to hold property.

The state court rejected this contention (Pet. App. A3-A4). It found (*id.* at A4) that the United States-Great Britain treaty "does not authorize a non-resident Canadian citizen to hold and acquire real property in the United States in derogation of any state law" and "in no way affects the State's rights through its legislature to restrict the ownership of real property located within [its] boundaries." Accordingly, the court adjudged (*ibid.*) that petitioner's land "should escheat to the State of Mississippi" and that the sheriff "shall take the necessary and proper steps to escheat the land to the State." The Supreme Court of Mississippi affirmed (*id.* at A1).

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[1]Convention on Tenure and Disposition of Real and Personal Property, Mar. 2, 1899, United States-Great Britain, 31 Stat. 1939 *et seq.*

[2]Supplementary Convention on Tenure and Disposition of Real and Personal Property: Accession of Canada, Oct. 21, 1921, United States-Great Britain, art. I, 42 Stat. 2147. The supplementary convention followed this Court's decision in *Sullivan* v. *Kidd*, 254 U.S. 433 (1921), that the 1899 treaty did not apply to citizens of Canada.

[3]Treaty of Friendship, Commerce and Navigation, July 27, 1853, United States-Argentina, art. IX, 10 Stat. 1005.

2. Petitioner renews the argument that the United States-Great Britain and the United States-Argentina treaties entitle him to the same right as a United States citizen to own real property in this country and that the Mississippi statute conflicts with that treaty right by prohibiting non-resident aliens from holding or acquiring land. This argument is without merit and does not warrant further review.

It is a well-settled principle of international law that an alien's right to acquire, hold, and dispose of property is subject to regulation by the state where the property is located. 8 M. Whiteman, *Digest of International Law* 487-488 (1967). Although this principle may be altered by treaty, and a variety of treaty provisions in fact exist, "[i]n the more recent treaties the United States has not accorded nationals of foreign states the privilege of acquiring lands within American territory if such acquisition is opposed by local state law" (*id.* at 487). See also U.S. Dep't of State, *Digest of United States Practice in International Law 1976*, at 92 (1977).[4]

Article V of the treaty between the United States and Great Britain, upon which petitioner relies, provides (see page 2 note 1, *supra*; emphasis added):

> In all that concerns *the right of disposing* of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in the Dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation.

By its terms, this provision is limited to the disposition of property and does not apply to the acquisition or holding of property. Thus, while the treaty confers "most favored

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[4]The Department of State has noted that "the great majority of states do not prohibit acquisition of immovable property by aliens." See 8 M. Whiteman, *supra*, at 487.

nation" status upon the citizens of the two countries, it does so only with respect to "the right of disposing of * * * property."[5]

For this reason, petitioner's reliance upon the United States-Argentina treaty of 1853 is misplaced. That treaty grants Argentines the same rights as Americans for "the acquiring and disposing of property" in the United States.[6] However, because the "most favored nation" provision in the United States-Great Britain treaty confers rights only with respect to the disposition and not the acquisition of property, it is unaffected by the clause in the United States-Argentina treaty regarding "the acquiring * * * of property." Taken together, the two treaties do no more than grant to Canadian citizens the same rights to dispose of property that American citizens enjoy. Accordingly, nothing in the United States-Great Britain treaty preempts the Mississippi statute prohibiting non-resident aliens to acquire or hold land.

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[5]Cf. *Zschernig* v. *Miller*, 389 U.S. 429, 431 n.2 (1968); *id.* at 450 (Harlan, J., concurring in the result); *Kolovrat* v. *Oregon*, 366 U.S. 187, 195 & n.13 (1961).

[6]The United States-Argentina treaty provides (see page 2 note 3, *supra*; emphasis added):

> In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods, and effects, and to *the acquiring and disposing of property* of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, as also to the administration of justice, *the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights as native citizens*; and they shall not be charged in any of those respects, with any higher imposts or duties than those which are paid, or may be paid, by native citizens — submitting, of course, to the local laws and regulations of each country respectively.

Cf. *Kolovrat* v. *Oregon*, 366 U.S. at 192, 193.

The plain language of Article V is confirmed by the history of the ratification of the United States-Great Britain treaty. In the treaty submitted by President McKinley to the Senate for its advice and consent, the "most favored nation" provision in Article V referred to "the right of *acquiring or possessing or disposing* of every kind of property, real or personal."[7] Thereafter, the Senate gave its advice and consent to the treaty subject to three amendments, including the following deletion in the "most favored nation" provision:

> In Article V, on page 8, in line 7, strike out the words "acquiring or possessing or." [8]

Great Britain accepted the amendments and the instruments of ratification were exchanged on July 28, 1900.[9] Thus, in ratifying the treaty, the United States and Great Britain specifically agreed to delete from the "most favored nation" provision the references to "acquiring or possessing" property and thereby to limit the provision to "the right of disposing of * * * property." Petitioner's argument would read back into the treaty the very language that was deliberately eliminated.

The text and history of the United States-Great Britain treaty are also reinforced by the evident purpose of the accord. Bilateral treaties "negotiated before World War II

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[7] *Tenure and Disposition of Real and Personal Property*, S. Doc. 158, 56th Cong., 1st Sess. 4 (1900) (emphasis added).

[8] S. Res. of Mar. 2, 1900, 56th Cong., 1st Sess. This resolution was not printed in the Congressional Record or other Senate documents, but a manuscript copy can be found in the records of the Office of Treaty Affairs of the Department of State. The resolution is reproduced in the appendix to this memorandum, *infra*, 1a. See also 12 C. Bevans, U.S. Dep't of State, *Treaties and Other International Agreements of the United States of America 1776-1949*, at 246 n.1 (1974) (describing the Senate amendments).

[9] See 31 Stat. 1939 (headnote).

tend to be selective, apparently covering only those issues that had generated difficulty between the parties. * * * * * The older bilateral treaties are * * * [generally] specific in their provisions and * * * limited in their scope. They normally focus on the inheritance problem, which apparently was a persistent issue in the early part of this century. Many of them go no farther." F. Morrison, *Limitations on Alien Investment in American Real Estate*, 60 Minn. L. Rev. 621, 657-658, 661 (1976). In that historical context, the "most favored nation" right to dispose of property pursuant to Article V can be understood as part of an effort to resolve the broader issue of inheritance by facilitating the sale or transfer of inherited property. Indeed, the other substantive provisions of the United States-Great Britain treaty are largely directed to various aspects of the problem of bequests and inheritances of property. The Mississippi prohibition on the acquisition or holding of land by nonresident aliens is not inconsistent with the purpose of the treaty to establish "most favored nation" status for the disposition of property.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.[10]

REX E. LEE
Solicitor General

NOVEMBER 1984

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[10]It appears that this case could have been brought to the Court as an appeal under 28 U.S.C. 1257(2). However, petitioner has elected to seek certiorari under 28 U.S.C. 1257(3). Because further review is not warranted, the petition for a writ of certiorari should be denied.

DOJ-1984-11

APPENDIX

In Executive Session, Senate of the United States

March 22, 1900.

Resolved.

[Two-thirds of the Senators present concurring therein], That the Senate advise and consent to the ratification of the Treaty between the United States and Great Britain relating to the tenure and disposition of real and personal property, signed March 2, 1899, with the following

Amendments:

At the end of Article IV, on page 8, line 4, after "London" insert *by direction of the treaty making power of the United States.*

In Article V, on page 8, in line 7, strike out the words "acquiring or possessing or."

In Article VII, on page 10, in lines 12 and 13, strike out the words "within twelve months from the date hereof."

Attest:

Secretary